



Department of Justice

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JUSTICE DEPARTMENT MAKES MODIFICATIONS TO PROPOSED MICROSOFT SETTLEMENT AFTER REVIEWING MORE THAN 30,000 PUBLIC COMMENTS

Modifications Refine Settlement That Fully Addresses Microsoft's Unlawful Conduct, Ensures Consumers Benefit from a More Competitive Software Market

WASHINGTON, D.C. – The Department of Justice today announced that it made clarifying modifications to the proposed Microsoft settlement after reviewing more than 30,000 public comments submitted to the Department's Antitrust Division. The modifications are refinements to a settlement that fully addresses Microsoft's unlawful conduct, prevents recurrence of similar conduct in the future, and ensures that consumers will benefit from a more competitive software market, the Department said. The settling States and Microsoft have agreed to the modifications.

In separate documents filed with the court late last night, the Department provided a memorandum supporting entry of the settlement as a final order of the court, a detailed response to the public comments, a memorandum regarding modifications to the settlement, and a stipulation to the modified settlement between the Department and the settling States, and Microsoft. Last night's filings were a predicate to a hearing before Judge Colleen Kollar-Kotelly on March 6, 2001.

The proposed settlement contains prohibitions on the practices the Court of Appeals determined were acts of monopoly maintenance, precludes other practices that Microsoft might engage in to impede middleware threats, and imposes affirmative obligations on Microsoft,

which create favorable conditions under which competing middleware products can be developed and deployed, the Department said.

“This settlement represents a full and complete remedy for the violations sustained by the Court of Appeals and serves the public interest in remedying antitrust violations and protecting competition for consumers,” said Charles A. James, Assistant Attorney General for the Antitrust Division. "The modifications announced today simply make this effective settlement even better."

If approved by the Court, the proposed settlement would resolve the lawsuit filed in May 1998. The Department said the settlement is a sound and appropriate response to the violations found by the District Court and affirmed by the Court of Appeals, recognizing those Courts' substantial narrowing of the case since its filing in 1998. In fashioning appropriate relief, the Department was legally bound to confine its remedial proposal to the sole basis of liability sustained by the Court of Appeals -- i.e., specific acts by Microsoft to impede the emergence of middleware as a threat to the operating system monopoly.

Public attention to the case, together with the Department's willingness to accept comments via e-mail, contributed to the unusually large number of comments, many of which were short and non-substantive. The public comments are being filed with the Court today and will be posted on the Department's website by March 4, 2002. Forty-seven of the most detailed comments previously were posted on February 15, 2002. After fully reviewing and considering all the comments, the Department of Justice has responded to the comments in a comprehensive document. Many of the most detailed and substantive comments were submitted by Microsoft's competitors, who advocated more severe restrictions on Microsoft's practices in various middleware and other software markets. As explained in the Department's response to the comments, many of the remedial proposals advanced were outside of the realm of the violations sustained by the court, or would benefit individual companies, rather than consumers.

Each modification clarifies the settlement agreement in provisions about which commentors indicated concerns regarding the precise meaning of the language. With one exception, these modifications refine the language and clarify the parties's shared intentions in drafting the settlement agreement. The modifications include:

- Clarification of the definition of APIs (application programming interfaces) to ensure that it reflects the parties' intentions and cannot be interpreted so as to nullify other operative provisions (Section III.D and Def. VI.A);
- Insertion of additional words to clarify the meaning of "interoperate" (Section III.E);
- Insertion of additional terms to clarify that Microsoft must allow various third parties to set defaults for rival products in an unbiased manner (Section III.H.2);
- Insertion of an additional sentence that clarifies that Microsoft may not alter certain product configurations on the Windows desktop based on whether the products are Microsoft or non-Microsoft products, and must make any alterations in an unbiased manner (Section III.H.3);
- Removal of the term providing for intellectual property licenses from certain third parties to Microsoft because the term could be read too broadly (Section III.I.5);
- Revision of the definition of Microsoft Middleware to ensure that the term has the meaning the parties intended and could not be read too narrowly (Def. VI.J); and
- Clarification of the definition of "Timely Manner" to ensure that it is not applied too narrowly (Def. VI.R).

“Microsoft committed serious violations of the antitrust laws, and those violations must be remedied expeditiously,” said Deborah P. Majoras, Deputy Assistant Attorney General in the Antitrust Division. “The settlement represents the carefully considered judgment of the Department of Justice as to how best to enjoin Microsoft’s violations, prevent their recurrence and restore competitive conditions for middleware. The modifications effectively respond to specific concerns raised in the public comments.”

The Department of Justice wishes to thank everyone who took the time to submit public comments on this decree. The Department welcomes broad public participation in the antitrust enforcement process and is encouraged by the public interest in this important case.

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